

IN THE UNITED STATES FEDERAL DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DOROTHY ZUCHELLI, Individually and as)
Executor of the Estate of James A. Lorence,)
Deceased)
2076 Som Center)
Mayfield Heights, OH 44124)

Plaintiffs,)

vs.)

UNITED STATES OF AMERICA)
C/O U.S. Attorney General)
U.S. Department of Justice)
950 Pennsylvania Avenue, NW)
Washington, DC 20530-0001)

Defendant.)

CASE NO:

JUDGE

COMPLAINT

**AFFIDAVIT OF MERIT
ATTACHED**

Now come Plaintiffs, by and through counsel, and for their Complaint against the
Defendant United States of America state as follows:

FACTS RELEVANT TO ALL CAUSES OF ACTION

1. This is a Federal Tort Claims Act suit brought by the Plaintiffs against the
Defendant United States of America, pursuant to the laws of the United States including
28 USC §1346(b) and 28 USC § 2671-2680 which provide jurisdiction in this Court for
this action.

2. Plaintiffs have fully complied with the requirements of the laws of the United States including 28 USC § 2675 by filing claims with the appropriate federal agency, the United States of America, Department of Veterans Affairs, that were received on September 20, 2021.

3. Plaintiffs are entitled to file this suit against the Defendant because on August 15, 2022, Plaintiffs' counsel received a letter denying Plaintiffs' claims. A copy of the letter is attached as *Plaintiff's Exhibit 1*.

4. Plaintiffs had a board-certified pulmonary critical care medicine and internal medicine physician review the medical records and information in this case and he states the Defendant breached the standard of care and proximately caused injuries to James A. Lorence and proximately caused his premature death. An affidavit of merit from this expert is attached as *Plaintiff's Exhibit 2*.

5. The Louis Stokes Cleveland Department of Veterans Affairs Medical Center (Cleveland VA Medical Center) is and was at all times relevant, a hospital, medical center or business duly organized under federal and/or state law, that is located in Cuyahoga County and held itself out to the public, including James A. Lorence, deceased, as competent and qualified to provide safe and adequate medical care and treatment.

6. On October 9, 2019 and October 17, 2019, James A. Lorence came under the care and treatment of the Defendant United States of America at the Cleveland VA Medical Center, by and through its physicians, nurses, and other health care providers. While under the Defendant's care and treatment, the Defendant negligently failed to act as a reasonably prudent health care provider under the same or similar circumstances

which ultimately resulted in injuries, damages and the premature death of James A Lorence.

7. For example, on October 9, 2019, James Lorence called the Cleveland VA Medical Center attempting to get in contact with the cardiology department as he was feeling weak, tired and had been told he may have to increase his water pills for water in his heart and lungs. Defendant United States of America and the Cleveland VA Medical Center, by and through its employees and/or agents, negligently failed to return James Lorence's phone call.

8. On October 17, 2019, eight days after leaving the unreturned message, James Lorence had a pulmonary outpatient visit at the Cleveland VA Medical Center. Defendant United States of America and Cleveland VA Medical Center by and through its employees and/or agents, negligently sent James Lorence home despite his alarming medical history, symptoms, test results, objective findings, and medical conditions. All of which caused him injuries; his pre-existing medical condition to worsen; and caused his premature death on October 17, 2019.

COUNT I – SURVIVORSHIP CLAIM

9. Plaintiffs incorporate herein by reference all the statements and allegations made in the preceding paragraphs above as if they were fully rewritten herein.

10. Plaintiff Dorothy Zuchelli is the Executor of the Estate of James A. Lorence, deceased, having been duly appointed by the Probate Court of Cuyahoga County, Ohio.

11. Plaintiff Dorothy Zuchelli brings these claims against the Defendant for the benefit of herself, for the Estate of James A. Lorence, and for the heirs and next of kin of James A. Lorence.

12. Between October 9, 2019 and October 17, 2019, James A. Lorence was a patient of the Defendant.

13. During this time frame, the Defendant was negligent in providing medical care to James A. Lorence and breached the standard of care it owed to him.

14. As a direct and proximate result of the Defendant's negligence, James A. Lorence experienced conscious pain and suffering, suffered a loss of ability to perform his usual activities, and suffered other economic and noneconomic losses and damages from the time of the medical negligence until the time of his death on October 17, 2019.

COUNT II- LOSS OF SPOUSAL CONSORTIUM CLAIM

15. Plaintiffs incorporate herein by reference all the statements and allegations made in the preceding paragraphs above as if they were fully rewritten herein.

16. James A. Lorence and Plaintiff Dorothy Zuchelli were husband and wife at all times relevant herein.

17. As a result of the Defendant's negligence and the resulting injuries to James A. Lorence, Plaintiff Dorothy Zuchelli suffered a loss of her husband's spousal consortium between October 9, 2019 and October 17, 2019.

COUNT III – WRONGFUL DEATH CLAIM

18. Plaintiffs incorporate herein by reference all the statements and allegations made in the preceding paragraphs above as if they were fully rewritten herein.

19. Between October 9, 2019 and October 17, 2019, James A. Lorence was a patient of the Defendant.

20. During this time frame, the Defendant was negligent in providing medical care to James A. Lorence and breached the standard of care it owed to him.

21. As a direct and proximate result of the negligence of the Defendant, James A. Lorence suffered injuries that led to his premature death on October 17, 2019.

22. As a further direct and proximate result of the Defendant's negligence, James A. Lorence's surviving spouse, heirs and next of kin suffered a loss of society of the decedent, including a loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, and instruction.

23. As a further direct and proximate result of the Defendant's negligence, James A. Lorence's surviving spouse, heirs and next of kin suffered mental anguish and incurred funeral and burial expenses.

WHEREFORE, Plaintiffs demand judgment against Defendant in the amount of \$1,500,000.00, together with interest, reasonable attorney fees, the costs of this action, and any other relief to which they are entitled.

Respectfully submitted,

/s/ R. Craig McLaughlin

R. Craig McLaughlin (0068765)
Elk & Elk Co., Ltd.
6105 Parkland Blvd., Ste. 200
Mayfield Hts., OH 44124
Phone: (440) 442-6677
Fax: (440) 442-7944
Email: rmclaughlin@elknandelk.com
Attorney for Plaintiffs